

Inventor Tye, David
Serial No. 10/678,901
Army Dkt. No.: 021878.0005US1

Art Unit: 3654
Examiner: Esther O Okezie

Remarks/Arguments

The applicant thanks the examiner for her helpful advice and dedication in helping the applicant in procuring patent protection on the applicant's invention.

The applicant thanks the examiner for recognizing allowable subject matter in claim 11. Not wishing to limit the scope of independent claims to "pneumatic" finger, the applicant hereby proposes to amend all independent claims to include the limitation of a "mechanical finger" coupled to the support body capable of moving the gripping member away from the stationary gripping member. The applicant believes such amendment would place the claims in condition for allowance therefore earnestly seeks entry of these changes.

The applicant also wishes to change limitations of "4 distinct points" to "a plurality of distinct points," to better reflect the essence of the invention.

To preserve a complete record of prosecution history, the applicant respectfully disagrees with all of the rejections made by the examiner in the Final Office Action dated December 19, 2005. The following reflects a rebuttal against the examiner's rejections based on cited references.

35 U.S.C. § 102

Claims 9 and 10 were rejected as being anticipated by Anderson (U.S. Patent No. 2323080). The applicant disagrees with this rejection.

In particular, the Anderson device does not meet the following limitations:

- a biased gripping member biased toward a stationary gripping member
- a neck of the bottle to push the biased gripping member away from the stationary gripping member (in Anderson, a rim of the bottle is used, not the neck)
- gripping the bottle along the circumference of the neck

Inventor: Tye, David
Serial No. 10/678,901
Attorney Dkt. No. 021878.0005US1

Art Unit: 3654
Examiner: Esther O. Okezie

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros v Union Oil Co. of California*, 814 F.2d 628, 631 (MPEP § 2131). As can be gleaned from the cited case law, the requirement is that each element must be either expressly or inherently described. In examining the portion of the cited reference that the examiner has referred the applicant to, there is no disclosure of the above-identified limitations.

Although not agreeing with the rejection, the applicant proposes to amend claim 9 as discussed above.

35 USC 103(a)

Claims 1, 7, and 8 were rejected under 35 U.S.C. § 103(a) as being obvious by Erickson (U.S. Patent No. 1439302). The applicant respectfully disagrees.

Claims 1, 2, 7, and 8 were rejected under 35 U.S.C. § 103(a) as being obvious by Dries (U.S. Patent No. 1886473). The applicant respectfully disagrees.

Claims 1, 2, 7, and 8 were rejected under 35 U.S.C. § 103(a) as being obvious by Anderson (U.S. Patent No. 2323080). The applicant respectfully disagrees.

With respect to Erickson, Erickson does not have gripping members capable of receiving a crown neck of a bottle. The Erickson device attaches to a wall, so that it may be used to hang items on the wall. It would teach away from the intended purpose of the Erickson device to modify it so that it can receive a crown neck of a bottle. Further, the capability for gripping a crown neck of a bottle sufficiently limits the claimed structure to ones that are capable of performing as such.

Furthermore, the examiner argued that although the Erickson device has only one set of gripping members, it would have been obvious to have multiple hooks on the Erickson device to hang multiple articles of clothing. The applicant would like to point out, that the gripping members as recognized by the examiner in the Erickson device are

Inventor: Tye, David
Serial No.: 10/678,901
Army Dkt No.: 021878 0005US1

Art Unit: 3654
Examiner: Esther O. Okezie

claws 2, 5, and 10 Part 7 was considered by the examiner as the support body. As such, it would not have been obvious to provide more claws (2, 5 and 10) on part 7 of the Erickson device, as additional claws (2, 5, and 10) do not aid in hanging additional articles of clothing.

As for claim 7, Erickson does not disclose a "sliding" capability between the claws.

As for claim 8, in claws in Erickson do not have grooves.

With respect to the Dries reference, the Dries device fails to properly reject claims 1, 2, 7, and 8 because:

- The Dries device does not have a structure capable of gripping a crown neck of a bottle
- The claws in Dries are movable, but are not biased
- It would not have been obvious to provide multiple claws onto handle 13 in order to concurrently remove multiple hot pans a from an oven
- Claws in Dries do not have grooves

With respect to the Anderson reference, the Anderson device fails to properly reject claims 1, 2, 7, and 8 because:

- Gripping member (6) of Anderson is not biased toward another gripping member The Anderson device is made of a single piece of metal, the biasing force as described by the examiner only exists when the device is contorted out of its original shape. If the examiner's argument is right, then almost any solid material can be considered to be biased against something, some how
- The Anderson device receives a rim of a bottle, not the crown neck of a bottle
- It would not have been obvious to provide multiple gripping members (4) and (6) onto support body (3). Such modification would teach away from the intended purpose of providing a single bottle opener attached to every bottle being shipped in a crate. Moreover, it is unclear how and where would one skilled in the art provide additional gripping members (4) and

Inventor: Tye, David
Serial No: 10/678,901
Attny Dkt No: 021878 0005US1

Art Unit 3654
Examiner: Esther O. Okezie

(6) onto support body (3) so as to concurrently attach to an adjacent bottle in a crate, given the relatively compact configuration of support body (3)

- There is no sliding between the gripping members as required by claim 7
- Stationary gripping member of Anderson do not have a groove

The Federal Circuit has indicated that one important indicium of nonobviousness is "teaching away from" the claimed invention by the prior art, and has reversed rejections of claims where it found that prior art references applied by the PTO in fact teaching away from what was being claimed. Therefore, an applicant may rebut a prima facie case of obviousness by showing that the prior art teaches away from the claimed invention in any material respect. In re Geisler, 116 F.3d at 1469, 43 USPQ2d at 1365 (quoting In re Malagari, 499 F.2d at 1303, 182 USPQ at 553).

Conclusion

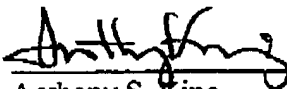
Claims 1, 2, 7-11 are pending in this application. The applicant earnestly requests entry of claim amendments to modify claims 1 and 9, and to cancel claim 11. Such amendments are believed to place the claims in condition for allowance.

Respectfully submitted,

Rutan & Tucker, LLP

Dated: March 7, 2006

By: _____


Anthony S. King
Registration No. 49,063

Attorneys for Applicant(s)
Post Office Box 1950
Costa Mesa, CA 92628-1950
Tel: (714) 641-5100
Fax: (714) 546-9035